

2021 Joint Chairmen's Report - Operating Budget
State Board of Elections (D38I01)
Local Cost Sharing Report (p 35)

This report is submitted in response to the 2021 Joint Chairmen's Report - Operating Budget (April 2021, page 35). In the Joint Chairmen's Report, the committees stated their interest in the State's cost-sharing structures with local boards of elections (LBEs) and requested that the State Board of Elections (SBE) submit a report identifying:

- how SBE interprets current statutory provisions governing the allocation of costs between SBE and LBEs, including identifying areas in which cost-sharing is viewed to be required and where it is discretionary, and how it makes those determinations;
- in as much detail as possible, each category of election expenditures and the current allocation of costs between SBE and LBEs for each category;
- any categories of expenditure in which the allocation of costs between SBE and LBEs has changed in the last two years; and
- categories of election expenditure for which the cost-sharing structure is defined on a case-by-case basis

History of Cost Sharing in Election Administration

Historically, elections were funded exclusively by local jurisdictions.¹ With the enactment of Chapter 564 of the Laws of Maryland (2001),² SBE was required to select a statewide, uniform voting system and fund one-half of the costs related to this system.³

Section 4 of Chapter 564 listed specific costs to be shared equally between the State and county governments. The listed costs were:

- Acquiring and operating the voting system used at voting locations
- Acquiring and operating the voting system used to count provisional and mail-in ballots
- Technical support and programming of the voting system
- Voting system related supplies, materials and software licenses
- Printing of ballots

¹ Over the decades, elections in Maryland became more uniform and centrally administered. The benefits of uniformity and centralization are significant for voters and election officials. Regardless of where voters live, the voting process will be the same; a voter who moves to another jurisdiction in Maryland will not have to learn a new voting process or system to vote. Similarly, election officials can share best practices because they are using the same equipment and following the same procedures. There are economies of scale when purchasing equipment and supplies for the whole State rather than each jurisdiction buying its own supplies. The final system to centralize and make uniform was the statewide voting system. To facilitate this transition, the State agreed to pay one-half of the costs related to the acquisition and implementation of the system. For more information about the movement to centralize and create uniformity, see the December 1997 report of the Commission to Revise the Election Code and the February 2001 report of the Special Committee on Voting Systems and Election Procedures in Maryland.

² Chapter 564 was introduced as House Bill 1457 and Senate Bill 833 of the 2001 Legislative Session.

³ Section 4 of Chapter 564 reads: That, subject to Section 5 of this Act, each county shall pay its share of one-half of the State's cost of acquiring and operating the uniform statewide voting systems for voting in polling places and for absentee voting provided for under this Act, including the cost of maintenance, storage, printing of ballots, technical support and programming, related supplies and materials, and software licensing fees. A county's share of the cost of acquiring and operating the uniform statewide voting systems shall be based upon the county's voting age population.

The costs listed in Chapter 564, however, were not intended to be an exhaustive list (as evidenced by the use of the preposition “including”). Since the enactment of Chapter 564, other costs have been identified as related to the operation of the voting system and are shared equally between the State and county governments.⁴ These costs are:

- Storing and transporting the voting system to and from the voting locations
- Maintaining and storing printed ballots
- Temporary staff hired for each election performing tasks related to the voting system. These individuals include voting system technicians and support technicians, individuals who perform the required pre-election testing, provide on-site and field support for the LBEs, train local election officials and voters on the voting system, and other technical and project support.

There are two other cost sharing agreements for other election systems.

- In 2005, SBE and the Maryland Association of Counties entered into a cost sharing agreement for the implementation and maintenance of the statewide voter registration, candidacy and election management system (MDVOTERS) through FY 2011.⁵ Under this agreement, the State used \$6 million of federal funds to develop and implement this system and \$5.2 million in federal funds to maintain the system through FY 2011. The LBEs were responsible for paying non-contract, ancillary costs through FY 2011. When the agreement ended in FY 2012, the LBEs resumed paying for the operation and maintenance of a voter registration system.⁶
- In 2006, the State paid \$28 million to purchase (with financing through the State Treasurer’s Office) the current electronic pollbook solution. After the initial State investment, the LBEs paid and continue to pay all costs associated with the electronic pollbooks.

Recent legislation defines the funding source for two expenditures.

- Chapters 36 (House Bill 37) and 37 (Senate Bill 145) of the Laws of Maryland (2020) require that SBE reimburse each local board for 50% of the cost of prepaid postage for mail-in ballots. This cost sharing agreement was used for the 2020 Primary and General Elections and all future elections.

⁴ In 2004, the Office of the Attorney General issued advice on whether costs associated with two contracts were subject to the cost sharing agreement required by Chapter 564. The contracts related to project management support for the 2004 implementation in 22 counties of the statewide voting system. The contractor’s duties ranged from typical project management duties to voter outreach and public awareness to election official training to reviewing deliverables to drafting procedures related to the new voting system. Assistant Attorney General Bonnie Kirkland advised that language in Section 4 was intended to have “broad application” to costs associated with the voting system. See Appendix A (November 16, 2004 letter from Assistant Attorney General Bonnie Kirkland to Simon Powell of the Department of Legislative Services).

⁵ See Appendix B (October 14, 2005 letter from Linda H. Lamone, State Administrator, and Nelson Bolender, President, Maryland Association of Counties, to Senator Ulysses Currie, Chairman, Senate Budget & Taxation Committee, and Senator Norman Conway, Chairman, House Appropriations Committee).

⁶ Prior to the implementation of MDVOTERS, each LBE was responsible for paying all costs associated with maintaining its voter registration system.

- Chapter 646 (Senate Bill 525) of the Laws of Maryland (2021) requires that SBE pay for a ballot box at the Baltimore City Centralized Booking Facility.

Except as described above, there are no other legal requirements or other agreements that require State funds for other election systems or costs related to election administration.

Categories of Election Expenditures & Allocation of Costs

1. *Shared Costs*

The table below lists costs associated with the voting system, and as described above, all of these costs are shared equally between the State and LBEs.

For some costs, SBE shares based on actual costs rather than voting age population. For example, some LBEs use temporary staff provided under SBE's contract while other LBEs do not. If the voting age population calculation was used to share this cost, it would create an unfair situation for some LBEs. A LBE that did not use the temporary staff would be charged, and an LBE that used less staff would be subsidizing a LBE that used more staff. Other examples of costs shared based on actual costs are storage and transportation costs, leasing or renting additional equipment, and the production and mailing of mail-in ballot packets.

ITEM	DESCRIPTION / COMMENTS
Activation Cards	Cards are used with the ballot marking device. The device prints the voter's selections on these cards, and the voter feeds the card into the scanner for tabulation.
Automated Ballot Tabulation Audit	Audit to verify the accuracy of the voting system by re-tabulating 100% of all ballot images and comparing the audit results from the audit with the voting system's results. It is performed before election results are certified.
Black and Gray Carts	Used to transport and store voting equipment, electronic equipment and other supplies.
Blank Ballot Paper	Used to duplicate mail-in ballots delivered to voters electronically or print ballots as needed.
Blue Tote Bins	Once a voter feeds a ballot into a scanner, the voted ballot falls into this bin. The bin holds the ballots until it is removed and secured by an election judge.
Business Reply Postage	Costs associated with voters using USPS to return: (1) completed mail-in ballot request forms for the 2020 General Election; and (2) voted ballots in the 2020 Primary and General Elections
Central voting system networks, including servers and UPS	Networks that aggregate election results and equipment that supports that aggregation.
Central Warehouse	SBE's warehouse to receive and deploy voting equipment.

ITEM	DESCRIPTION / COMMENTS
DS200 Scanner with Ballot Box	Tabulates and securely stored voted ballots.
DS850 High Speed Scanner	Certain local boards use this high-speed scanner to tabulate mail-in and provisional ballots.
Election Management System ⁷	This system (called "Agency Election Management System" (AEMS)) is middleware that interfaces with the voting system to provide data to create ballots and aggregate results. Also performs non-voting system related functions before and after each election.
ExpressVote Unit (ballot marking device), Tables and Carrying Cases	Touchscreen device voters can use to mark ballots. It is also the accessible way most voters with disabilities can vote independently and secretly.
Manual Ballot Tabulation Audit	Audit verifies the accuracy of the voting system by manually tabulating ballots from a number of precincts and comparing the results from the audit with the voting system's results for that precinct. It is performed after election results are certified.
Printed Ballots	Ballots are used for in-person voting, provisional voting, and in person mail-in ballot requests.
Privacy Sleeves	Voters place their voted ballots in these folders to keep their selections secret before they feed the ballot into the scanner.
Project Management Personnel	Vendors who provide project management personnel and support for the voting system.
Regional Managers	SBE employees that support the voting system and serve as a liaison between SBE and the LBEs. ⁸
Storage and Transportation	Expenses related to storing and transporting the voting system and ballot boxes to and from voting locations.
Temporary Staff	Individuals hired before each election to assist the local boards with preparing the voting system and training election judges on the voting system.
Test Deck Ballots	Pre-marked ballots used in pre-election testing to confirm that each scanner is counting accurately.

⁷ Historically, the State's internal election management system was funded with State funds. A portion of the system's funding should have shifted to the LBEs once Chapter 564 of the Law of Maryland (2001) was enacted, but it was not. Starting in FY23, the LBEs will pay one half of the voting system-related costs for the new AEMS system, and SBE will pay the other half of the voting system-related costs and all of the other costs.

⁸ These employees were formally employees of the voting system or project support vendor. In FY13, these positions were transferred to state service with the same cost sharing structure.

ITEM	DESCRIPTION / COMMENTS
Voting Booths	Booths voters use when marking their ballots. There are two types of booths - one for voters who mark their ballots while standing and one for voters who mark their ballots while sitting.

2. **LBE Costs**

The table below shows costs that are allocated to the LBEs. Although SBE procures these items, SBE does not pay for any portion of these costs.

ITEMS	DESCRIPTION / COMMENTS
Ballot on Demand Printers Warranties	Warranty support for the printers capable of printing scannable ballots.
Call Center	State's call center vendor provides basic election information to callers.
Electronic Pollbooks, Software, Licenses and Ancillary Supplies	The tablet-like devices used to check-in voters and manage the same day registration and address process at voting locations.
LBE Election Supplies	Election supplies depend on the needs of each LBE. Supplies include "I Voted" stickers, voting location signage, accessibility equipment and supplies, blank voter authority cards, and privacy screens for scanners and voting areas for provisional voters.
MDVOTERS - Application Support	A vendor performs software development and support, licenses and project management services
MDVOTERS & Voter Services - Data Center Hosting	A vendor hosts MDVOTERS and affiliated systems.

3. **SBE Costs**

SBE generally pays for expenses that are not directly attributable to any one LBE but benefit all LBEs. These expenses include:

- SBE staff supporting the election judges' training, absentee and provisional voting programs
- SBE's contractual election security team and protecting election systems and data
- Annual membership dues for the Electronic Registration Information Center (ERIC)
- Printing and mailings required under ERIC membership agreement
- Printing and mailings to eligible but unregistered individuals with information about same day registration
- Printing and mailings to eligible individuals in correctional institutions⁹
- Printing and distribution of voter registration applications

⁹ See Chapter 734 (House Bill 222) of the Laws of Maryland (2021).

- Initial purchase of ballot boxes for the 2020 Primary Election
- Development and maintenance of AEMS for non-voting system related functionality

Categories of Expenditures: Revised Cost Allocations in FY 2019 and FY 2020

Prior to FY 2020, the LBEs paid all costs associated with printing and mailing the application to request a mail-in ballot and printing and mailing of all mail-in ballot packets. In FY 2020, these costs were shared equally.¹⁰

Categories of Expenditures: Case-by-Case Basis

Occasionally, there are times when SBE funds expenses that would otherwise be paid for by the LBEs. For example, SBE's FY21 budget included State funds to share equally the costs for project management support for the new electronic pollbook solution. SBE requested and received these funds to share the costs of this statewide project.

Another example was FY20 costs associated with setting up a data processing center to process the large volume of requests for mail-in ballots received leading up to the 2020 General Election. While MVA provided the facility and information systems at no charge, SBE hired temporary employees to process the applications. The cost of the temporary employees was shared between SBE and the LBEs who used the data center processing center. MVA has graciously agreed to allow SBE to use their facilities and information systems for the 2022 election cycle.

Categories of Expenditures: 2021 Legislative Initiatives

Several legislative initiatives were adopted during the 2021 Legislative Session that did not define whether implementation costs were SBE, LBE or shared costs. These initiatives are:

- Chapters 56 and 514: Pre-election mailing to eligible voters of applications to request a mail-in ballot
- Chapters 646 and 734: Pre-election mailing to eligible individuals in correctional facilities

Without specific instruction by the General Assembly, SBE will continue to follow the cost-sharing requirements, agreements, and principles outlined in the report.

¹⁰ Both mailings included a return envelope with pre-paid postage, also a shared cost. The cost of postage is not listed in this section because it is a new cost, and the cost-sharing arrangement did not change in FY19 or FY20.

Appendix A: November 16, 2004 letter from Assistant Attorney General Bonnie Kirkland to Simon Powell of the Department of Legislative Services

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**THE ATTORNEY GENERAL OF MARYLAND
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY**

November 17, 2004

TELECOPIER NO.

410-946-5601

WRITER'S DIRECT DIAL NO.

410-946-5600

Mr. Simon Powell
Department of Legislative Services
90 State Circle
Annapolis, MD 21401-1991

Dear Mr. Powell:

You have asked for advice on the applicability of Section 4 of Chapter 564 of the Acts of the General Assembly of 2001 to two contracts between the State Board of Elections (SBE) and a project management contractor. While I cannot say with absolute certainty what the legislature intended with the language of section 4, it is my view that the costs associated with the two contracts do fall within the broad scope of Section 4 and thus are subject to the cost sharing provisions of that section.

Chapter 564 of 2001 put into place a Statewide uniform voting system. As a part of that bill, Section 4 provides that:

Subject to Section 5 of this Act, each county shall pay its share of one-half of the state's cost of acquiring and operating the uniform statewide voting systems for voting in polling places and for absentee voting provided for under this Act, including the cost of maintenance, storage, printing of ballots, technical support and programming, related supplies and materials, and software licensing fees. A county's share of the cost of acquiring and operating the uniform statewide voting systems shall be based upon the county's voting age population. (emphasis added)

The SBE entered into two contracts with ACCENTURE, LLP (Accenture) on January 8, 2004 and April 29, 2004 to provide project management support for the March 2004 presidential primary election and the November 2004 presidential general election,

respectively.¹ These contracts were an integral part of implementing the new statewide

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- ¹ Under the January contract, Accenture was to provide the following services:
A. Provide election reform project management support for the March 2004 presidential primary election, including assistance with SBE's oversight of the SBE Voting System Contractor. This work may involve, but is not limited to:

1. Voter outreach and public awareness
2. System upgrade process
3. Training of election officials
4. Reviewing polling place site surveys
5. Ballot preparation process
6. Spanish language translation of voting materials
7. Reviewing third-party deliverables
8. Writing SBE procedures
9. Election day support recommendations
10. Recount procedures, if necessary.

Note: Accenture is not responsible for the work of the SBE Voting System Contractor.

- B. Assist SBE in assessing its public relation strategy and voting system implementation approach.

Under the April contract, Accenture was to provide the following services:
A. Provide project management support for the November 2004 presidential general election. This work will involve, but is not limited to:

1. Perform daily, accountable project manager functions in the absence of the SBE Voting System Project Manager.
 - i. When a new SBE Voting System Project Manager is hired, perform knowledge transfer to that individual.
 - ii. SBE is currently going through an RFP (Request for Proposals) process for Election Reform Program Management Office support. If Accenture is not selected, perform knowledge transfer to the selected contractor.
2. Represent SBE on the Voting System Implementation Steering Committee by assisting the chair of the meetings, setting the direction of the committee, and ensuring that the charter is adhered to.
3. Develop and manage on a daily basis an integrated Project Management Plan that defines the roles and responsibilities of the key stakeholders: SBE, local boards of election (LBEs), and the voting system contractor. The Project Management Plan incorporates scope, schedule, and resources available to complete the tasks and must include, at a minimum:
 - i. Work Breakdown Structure

- ii. Tasks
- iii. Resource Management Plan
- iv. Schedule
- v. Milestones
- vi. Cost
- 4. Develop a Risk Management Plan that includes risks and mitigation strategies. Manage the implementation of the risk mitigation strategies.
- 5. Develop a Quality Management Plan.
- 6. Develop and manage Key Performance Indicators (KPIs) using the CMMI (Capability Maturity Model Institute) methods that measure project scope, schedule, resources, quality, and risk. These KPIs will be tracked and reported on a monthly basis.
- 7. Develop and manage (non-contractual) Service Level Agreements between SBE and the 23 LBEs that are using the Diebold AccuVote Touch Screen Voting System, so that expectations can be established and managed. Establish and implement communication plan to address appropriate communication channels, contacts, and frequency.
- 8. Develop a People Change Management strategy for working with the LBEs to change from a locally administered, locally delivered system to a State administered, locally delivered system.
- 9. Make recommendations for process improvements.

Note: Accenture is not responsible for the work of the SBE voting system contractor or for work that is specifically defined in the SBE Voting System Implementation Plan.

- B. Provide contract management oversight to assist SBE in managing the SBE voting system contract.
 - 1. Review contract obligations.
 - i. Develop and maintain a contract compliance matrix.
 - ii. Develop checklists and define monitoring frequency.
 - 2. Review progress on meeting contract obligations and provide a Contract Compliance Report. Maintain this report on a monthly basis.
 - 3. Review contract deliverables for accuracy and quality.
 - i. Provide a Deliverable Review Report.
 - ii. Perform a gap analysis and provide supporting documentation.
 - iii. Hold a Deliverable Review Walk-Through with appropriate SBE personnel and LBE personnel, as necessary.
 - iv. Monitor SBE and the voting system contractor to facilitate compliance with completion of deliverables.
 - v. Make recommendations in writing for improvements.
 - 4. Provide documentation for contract remedial actions whenever the SBE voting system contractor does not meet contract obligations.

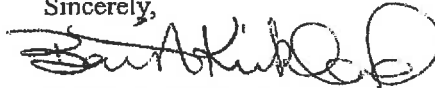
Mr. Simon Powell
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voting system, through oversight of the voting system contractor among other things. It is my view that the Scope of Work sections of the two contracts relate to "operating the uniform statewide voting systems" contemplated by Section 4.

According to the Maryland Style Manual for Statutory Law, "includes" is used with a list that is intended to be partial or illustrative. Thus, inclusion of the list of specific activities in Section 4 was not intended to limit cost sharing just to those activities listed, but rather to any costs associated with operating the new system. Further, the former counsel to the Senate Committee on Economic and Environmental Affairs, which adopted the amendment adding Section 4, has indicated that the Committee intended the section to have broad application. Finally, the FY 2005 Operating Budget included a new budget code for the SBE and stated that SBE "will use this program to appropriately account for expenditures related to improving election administration in the State," including the implementation of a statewide voting system. The new program (D38I01.02) in the FY 2005 budget includes funds relating to operation of the new voting system. For these reasons, it is my view that the language of Section 4 applies to the costs associated with the two Accenture contracts.

I hope this is responsive to your inquiry.

Sincerely,

A handwritten signature in black ink, appearing to read "Bonnie A. Kirkland", written over a horizontal line.

Bonnie A. Kirkland
Assistant Attorney General

BAK:as

Appendix B: October 14, 2005 letter from Linda H. Lamone, State Administrator, and Nelson Bolender, President, Maryland Association of Counties, to Senator Ulysses Currie, Chairman, Senate Budget & Taxation Committee, and Senator Norman Conway, Chairman, House Appropriations Committee



October 14, 2005

The Honorable Ulysses Currie
Chairman
Senate Budget & Taxation Committee
3 West Miller Senate Building
11 Bladen Street
Annapolis, MD 21401-1991

The Honorable Norman H. Conway
Chairman
House Appropriations Committee
131 Lowe House Office Building
6 Bladen Street
Annapolis, MD 21401-1991

Dear Sirs:

In the letter dated April 11, 2005 between the State Board of Elections (SBE) and the Maryland Association of Counties (MACo), both parties agreed how the implementation costs of the new voter registration system (MDVOTERS) would be shared. Under this agreement, the State funds up to \$6 million of implementation costs through federal funds, and the counties fund the remainder (\$3.31 million plus costs outside of the Saber contract). Each county's share of the implementation costs is based on its percentage of the State's voting age population.

With this letter, both parties agree that SBE will pay the full cost of the maintenance portion of the current Saber contract totaling \$5.2 million in federal funds through fiscal year 2011, and the counties will pay any ancillary costs associated with MDVOTERS that are outside the current Saber contract. Ancillary costs are *estimated* at \$2 million through fiscal year 2011 and include, but are not limited to, consulting fees, replacement costs, any equipment /services outside of the contract, and connectivity for system. It is expected that the estimated \$2 million will be staggered over the final four or five years. Like the allocation for implementation costs, each county's share will be based on its percentage of the State's voting age population.

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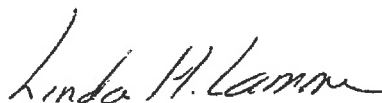
The Honorable Ulysses Currie
The Honorable Norman Conway
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This funding agreement for the maintenance portion of the current Saber contract means that the total cost of MDVOTERS through fiscal year 2011 (\$16.7 million) is allocated as follows:

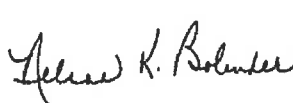
	State (in millions)	County (in millions)
Implementation	\$6.0	\$3.31
Maintenance	\$5.2	2.0
Total (% of total)	\$11.2 (65%)	\$5.31 (35%)

SBE continues to be committed to providing the counties with the necessary budget information to ensure sound fiscal planning. Thank you for your consideration of this agreement.

Respectfully,



Linda H. Lamone
State Administrator of Elections



Nelson Bolender
President, Maryland Association of Counties